Office Supreme Court, U. S.
FILED
OCT 15 1923
WM. R. STANSBURY

No. 131.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARREL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry, and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,
Appellants,

vs.

ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY, and the MISSOURI AND ILLINOIS RAILROAD COMPANY,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANTS IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL OR TRANSFER CAUSE TO CIRCUIT COURT OF APPEALS.

JUNE C. SMITH,
Attorney for Appellants.

ST. LOUIS LAW PRINTING CO., 415 N. Eighth St. Main 1819, Central 919.

Office Supreme Court, U. S.
FILED
OCT 15 1923
WM. R. STANSBURY

No. 131.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARREL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry, and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,
Appellants,

vs.

ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY, and the MISSOURI AND ILLINOIS RAILROAD COMPANY,
Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANTS IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL OR TRANSFER CAUSE TO CIRCUIT COURT OF APPEALS.

JUNE C. SMITH,
Attorney for Appellants.

St. Louis Law Printing Co., 415 N. Eighth St. Main 1819, Central 919.

INDEX.

	Page
Statement	1-3
Brief of the argument	4-15

Cases Cited.

Cosmopolitan Mining Company v. Walsh, 193 U. S. 460	4
Keokuk and Hamilton Bridge Co. v. Salm, 258 U. S. 122	9, 10, 13
Wells Fargo and Company v. Nevada, 248 U. S. 265	11

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1923.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARREL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry, and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,

Appellants,

vs.

ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY, and the MISSOURI AND ILLINOIS RAILROAD COMPANY,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANTS IN OPPOSITION TO MOTION OF APPELLEES TO DISMISS APPEAL OR TRANSFER CAUSE TO CIRCUIT COURT OF APPEALS.

STATEMENT.

The statement of counsel for appellees in his motion to dismiss or transfer to Circuit Court of Ap-

peals, as to the facts, is substantially correct. It is, however, erroneous as to the conclusions drawn as to the issues raised by the motion of appellants in the District Court to dismiss the bill for want of equity.

The grounds on which the motion to dismiss were based, as therein stated, are as follows:

> "It appears from the face of the bill of complaint filed herein that the only alleged invalidity of the taxes sought to be enjoined by the decree of this Court consist wholly of discriminatory overvaluation of the property of the complainants.
>
> "It further appears from the allegations of said bill of complaint conclusively that the complainants have an adequate remedy at law, and that no grounds are stated in said bill of complaint that would justify a court of equity in taking jurisdiction of the matters therein charged and stated" (Rec., p. 78).

We think the issues raised by the motion to dismiss in the court below were correctly stated by us at page 10 of our original brief filed in this case, as follows:

> "Are the facts alleged in the bill sufficient to give a federal court equitable jurisdiction to enjoin the collection of the taxes in question on the ground that such collection would amount to a taking of the property of appellees without due process of law and constitute a denial of the equal

protection of the laws, and are the facts as stated in the bill sufficient to show that the taxpayer has no adequate remedy at law?''

We think the issues on the motion in the court below as stated by the counsel for appellees are entirely too narrow and circumscribed and that the record clearly presents to this Court, for review, the decision of the court below on a question involving the application of the Constitution of the United States, within the language of Section 238 of the Judicial Code.

BRIEF OF THE ARGUMENT.

It is a well-settled rule of law that the entire record furnishes the basis for determining whether the suit is one which involves the construction or application of the Constitution of the United States within the meaning of the Judiciary Act.

> Cosmopolitan Mining Company v. Walsh, 193 U. S. 460, 468.

In applying the rule there announced to the case at bar, an examination of the record discloses that the purpose of the bill was not to enjoin the making of an assessment or the extension of a tax, but to enjoin the appellants, as County Collectors, from applying to the County Courts of their respective counties for judgments confirming the taxes extended and an order for the sale of the property in satisfaction of such taxes. In other words, the theory of the bill is that, if application for judgment was made to the County Courts by the appellants for judgment sustaining the taxes and an order of sale, that these judgments would constitute a denial of due process of law. The material averment of the bill of complaint in this case is as follows:

> "Your orators further aver that in the proceedings aforesaid, and in the manner and form

aforesaid, the State of Illinois, by and through the action of its State Board of Equalization, State Tax Commission and other taxing officers, as aforesaid, is threatening to and will, unless said taxing officers are restrained by this Honorable Court, deny to your orators the equal protection of the Constitution and laws and take from them their property without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States'' (Rec., p. 46).

Hence, according to the bill, the threatened act sought to be enjoined was the application of appellants, as County Collectors, to the County Courts of their several counties for judgment and an order of sale of the property.

The prayer of the bill asks that appellants be enjoined from

> ''on the first day of the term of the County Court, in each of their several counties, at which judgment for taxes on delinquent lands and lots may be prayed, from reporting to the County Clerks and Clerks of the County Courts, of each of their several counties, any lands and lots or railroad property belonging to the complainants or either of them which was and is all or a part of the properties aforesaid lately owned or controlled by the said complainants, or either of them, and assessed to and taxed in the name of the Illinois Southern Railway Company, how-

ever described or known, and from including in any delinquent tax list for the year 1920, in any or either of said counties, on the first day of May, 1921, or at any other time, or asking or praying the County Court in either of said counties to render judgment against the said railroad property, lands and lots, or any of the complainants, or any or either of them for delinquent taxes for the years 1917 to 1920, inclusive" (Rec., p. 46).

The decree itself enjoins appellants as follows:

"It is, therefore, ordered, adjudged and decreed that the said defendants, and each of them, their deputies, agents, clerks, servants, assistants and attorneys, and all other persons operating or confederating with them or acting by, through or under their directions, be and they and each of them are commanded and restrained perpetually to refrain and absolutely desist from on the first day of any term of the County Court of their several and respective counties at which judgment for delinquent taxes upon lands, lots and railroad property may be applied for and prayed on account of delinquent taxes, interests, penalties and costs for the years 1917, 1918, 1919 and 1920, from reporting to the County Clerks and Clerks of the County Courts, of their respective and several counties, any lands, lots or railroad property belonging to or assessed to or in the name of the Illinois Southern Railway Company or the Missouri and Illinois Rail-

road Company, for delinquent taxes, special assessments, interests, penalties or costs for any or either of the years 1917, 1918, 1919 and 1920, or from applying for or praying any judgment against the said Illinois Southern Railway Company or the Missouri and Illinois Railroad Company, or the property of either of them, for any delinquent taxes for the years aforesaid, and from bringing any suit or suits for the collection of said taxes, interests, penalties or costs for said years" (Rec., p. 85).

It appears from the bill as above pointed out that the bill was predicated upon the allegation that if appellants, as County Collectors of their several counties, pursued the process provided by the laws of Illinois for subjecting railroad property to the payment of taxes and procured a judgment and order of sale in the manner and according to the provisions of the statutes of Illinois, that this would constitute the taking of property of appellees without due process of law.

The prayer of the bill was that appellants, as such County Collectors, be enjoined from pursuing the remedies provided by the statutes of Illinois. The final decree conforms to this prayer.

The motion to dismiss was in the nature of a general demurrer. The effect of the motion was to say that, conceding all the facts to be true, as alleged in the bill, there was an adequate remedy at law

provided by the statutes of Illinois, which would afford to appellees a complete and adequate remedy for the wrongs complained of in the bill.

The issue presented by the motion, stated briefly, is whether the plaintiffs had an adequate remedy at law. The remedy at law which presents itself is the remedy provided by the statutes of the State of Illinois in the courts of that state. The question presented to the Court, therefore, on the motion was, Is that remedy adequate and complete?

A remedy to be adequate must also be complete. A remedy to be adequate must not only be complete, but it must be of such a remedy as is guaranteed by the Constitution and laws of the United States. A remedy to be adequate must conform to all the constitutional requirements, including the guaranty of due process of law.

The bill on its face confesses that there is a remedy provided by the statutes of Illinois, namely, the application for judgment and order of sale in a regularly organized and constituted tribunal of Illinois. The bill alleged that that remedy was inadequate, in that the judgment of that court would constitute the taking of property without due process of law. A remedy which does not satisfy the requirements of due process of law would not be an adequate remedy. Conversely, a remedy which satisfied the requirements of due process of law would, if complete, constitute

an adequate remedy and satisfy the requirements of the Constitution.

Viewed from any standpoint, therefore, the issue on the motion to dismiss, while briefly stated, was, "Is there an adequate remedy at law?" involved the further question as to whether the remedy suggested as being adequate satisfied the requirements of due process of law. In other words the determination of whether the remedy was adequate involved the application of the due-process clause of the Fourteenth Amendment.

The Court, upon the motion, took judicial notice of the statutes of Illinois and the method of procedure for the subjection of railroad property to the payment of taxes extended. An examination of those statutes disclosed to the Court, on consideration of the motion, that the remedy at law, as provided by the Illinois statutes, is, in form, adequate and complete. A proceeding in which all questions as to the amount and validity of the assessment could be completely determined.

> Keokuk and Hamilton Bridge Co. v. Salm, 258 U. S. 122.

But the bill alleged that this remedy was inadequate, and that if the appellees pursued that remedy it would result in the taking of their property without due process of law. The motion challenged that

allegation and raised the truth of its averments as an issue to be tried on the motion.

Hence it was necessary that the court below go further in passing upon the motion and determine whether or not that allegation of the bill was true and whether or not the remedy at law afforded by the statute of Illinois would satisfy the requirements of the due process clause of the Fourteenth Amendment. The determination of this question involved an application of that provision of the Federal Constitution to the facts alleged in the bill. The Court found, as he must, in order to reach the conclusion he did reach, that the remedy at law provided by the statutes of Illinois, was inadequate, because the judgment of the County Courts as alleged in the bill of complaint did not satisfy the guaranties of the due process clause of the Fourteenth Amendment.

It must be kept in mind that the only thing appellants were sought to be enjoined from doing by the averments of the bill was applying to the courts of Illinois for a judgment sustaining the tax and ordering the sale of the property on the ground that such application and judgment would deny to the appellees due process of law.

This Court, in Keokuk and Hamilton Bridge Company v. Salm, 258 U. S. 122, in disposing of a case

identical with the case at bar, uses the following language:

> "But the bill failed to show that plaintiff was being deprived of property without due process of law, or was being denied equal protection of the laws, or that there was any danger that it would be. The law of Illinois affords ample opportunity to question the amount and the validity of an assessment, both before administrative tribunals and in its courts."

Again, in Wells Fargo and Company v. Nevada, 248 U. S. 265, the Court say:

> "In Nevada the mode of enforcing a tax such as this is by judicial proceedings wherein process issues and an opportunity is afforded for a full hearing. Only after there is a judgment sustaining the tax is payment enforced. This, as repeatedly has been held, satisfies the requirements of due process of law."

In order to entitle plaintiffs to the relief asked for in the bill of complaint they must show:

First. That some act has been threatened or is about to be consummated which will constitute a denial of due process of law, and

Second. That there is no court of law which affords a remedy against the threatened invasion of the constitutional right.

The motion to dismiss in this case challenges the sufficiencies of the bill in this respect. In order to constitute a denial of due process of law sufficient to warrant a court of equity in taking jurisdiction, the bill must show on its face not only some threatened act, but that there is no remedy in a court of law which will constitute due process of law. The decision of that issue is such that the court below, in passing upon the motion, must resort to an application of the due process clause of the Fourteenth Amendment.

The issue in this case, then, was, did the bill of complaint, on its face, show and state facts which will authorize a federal court of equity to enjoin the appellants from applying to the courts of Illinois for a judgment confirming the taxes in question and ordering a sale of the property on the ground that such judgment would constitute the taking of property without due process of law, in violation of the Fourteenth Amendment.

Unless the court below was of the opinion that the judicial proceedings provided by the statutes of Illinois, subjecting railroad property to the payment of taxes extended against them, constituted due process of law within the guaranties of the due process clause of the Fourteenth Amendment, that Court was compelled to overrule the motion. While, on the other hand, if that Court was of the opinion that

under the facts alleged in the bill there was a complete and adequate remedy at law in the courts of Illinois, which satisfied the requirements of due process of law, then the Court should have sustained the motion and dismissed the bill on the ground that the plaintiffs had a plain, adequate and complete remedy at law in the courts of Illinois. This decision involved the application of that provision of the Constitution.

The Court, in its decision on the motion to dismiss, as well as in the final decree, found that the plan and process provided by the statutes of Illinois for subjecting railroad property to the payment of taxes constituted a denial of due process of law within the meaning of the Fourteenth Amendment.

The case of Keokuk and Hamilton Bridge Company v. Salm, 258 U. S. 122, was a case exactly identical with the case at bar. The bill was filed by a taxpayer to enjoin the collection of taxes which was alleged were invalid for the same reasons as alleged in the bill of complaint in the case at bar. The defendant in the cited case was a county collector of taxes, occupying the same position as the appellants in this case. A motion was made in the District Court by the defendant to dismiss the bill on the ground that the plaintiff had a plain, adequate and complete remedy at law. The same identical grounds as alleged in the motion to dismiss in this case. In

the cited case the motion was sustained. The Court, in that case, in the application of the due process clause of the Fourteenth Amendment, found that the proceedings for the enforcement of taxes against property provided by the statutes of Illinois satisfied the due process clause. The motion was sustained and the suit dismissed. An appeal was taken direct to this court where the order and decree of the District Court was affirmed. The two cases are identical as to the issues, the only difference being, in the cited case, the motion to dismiss in the District Court was sustained, while in the case at bar the motion was overruled. In other words, the District Court, in the cited case in the application of the due process clause of the Fourteenth Amendment held that the proceedings provided by the statutes of Illinois satisfied the requirements of the due process clause of the Federal Constitution, and was affirmed by this Court on direct appeal. While in the case at bar the Court, in the application of the same provision of the Constitution, held that the same process and proceedings provided by the statutes of Illinois did not satisfy the due process clause of the Fourteenth Amendment.

We respectfully submit that the decision of the court below, in passing on the motion to dismiss the suit, involved the application of the Constitution of the United States.

The record discloses conclusively that the court below could not determine the adequacy of the remedy at law provided by the statutes of Illinois in the courts of that state without the consideration and application of the due process clause of the Federal Constitution to the case made by the allegations of the bill of complaint and the issues raised by the motion to dismiss.

We respectfully submit that the motion of appellees to dismiss the appeal or in the alternative to transfer the cause to the Circuit Court of Appeals for the Seventh Circuit should be denied.

June C. Smith

Attorney for Appellants.

Office Supreme Court, U. S.
FILED
JAN 16 1923
WM. R. STANSBURY
CLERK

NO. 181

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1922.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARRELL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry, and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois,

Appellants,

vs.

ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and the MISSOURI AND ILLINOIS RAILROAD COMPANY,

Appellees.

Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANTS.

JUNE C. SMITH,
Attorney for Appellants.

FRANK F. NOLEMAN,
ANDREW J. DALLSTREAM,
CHARLES F. DEW,
State's Attorney, Marion County,
HUGH V. MURRAY,
State's Attorney, Clinton County,
H. H. HOUSE,
State's Attorney, Washington County,
JUDSON E. HARRISS,
State's Attorney, Perry County,
LOGAN F. HACHMAN,
State's Attorney, Randolph County.
Of Counsel.

INDEX.

	Page
Accounting, as ground for equity jurisdiction	6
Acts enjoined	28
Acts sought to be enjoined	24
Acts threatened	24
Adequate remedy at law	39, 45
Appeal from judgment of State Court	37
Application for judgment for sale in State Court	30
Assessment of railroad property	14
Assessment, notice of	43
Assignment of errors	8
Bill of complaint	20
Paragraph 8	57
Prayer for relief	21
Bill of complaint, Greene v. L. & I. R. Co	17
Case, statement of	1
Collection of taxes, process in Illinois	28
Collection of taxes, process in Kentucky	24
Comparison with Greene v. L. & I. R. Co	16, 40, 64
Comparison with Wells-Fargo Co. v. Nevada	41
Comparison with Raymond v. Chicago U. Traction Co	64
Complaint, bill of	20, 57
Contentions of appellants	11
Decree, final	26-28
Defenses in State Court of law	32
Due process of law	42
Errors assigned	8
Errors relied upon	10
Equity jurisdiction	56, 64
Final decree	26-28
Fraud as ground for equity jurisdiction	42, 63
Greene v. L. & I. R. Co	42

Illinois statutes cited, Chap. 120, Par. 56, Cahill's Rev. Statutes..... 31
Par. 107..... 14
Par. 114..... 44
Par. 115..... 45
Par. 150..... 47
Par. 154..... 29
Par. 155.....29, 48
Par. 190..... 30
Par. 200..... 32
Par. 209..... 34
Par. 210..... 37
Par. 269..... 29

Injunction discussed..... 28

Kentucky statutes cited—
Section 4049..... 25
Section 4077..... 24
Section 4078..... 24
Section 4079..... 24
Section 4083..... 24
Section 4084..... 25
Section 4091..... 25

Keokuk & Hamilton Bridge Co. v. Salm..... 42
Multiplicity of suits.....45, 68
Notice of assessment.....43-44
Personal property tax..... 29
Prayer for relief..... 21
Proceeding in County Court on application for judgment 32
Questions at issue..... 16
Railroad property tax..... 30
Raymond v. Chicago U. T. Co.....47, 49

Remedy at law in state courts..... 32
Section 267 of the Judicial Code..... 59
Specification of errors relied upon..... 8
State Board of Equalization..... 15
State Tax Commission..... 15
Statement of the case..... 1
Taxes, personal..... 29
Taxes, railroad..... 30
Threatened acts..... 22
Wells-Fargo & Co. v. Nevada..... 41

Cases Cited.

Alexander v. Mason, 125 Fed. 830..... 67
Allen v. Pullman's Palace Car Co., 139 U. S. 658.. 63
Bennett v. Butterworth, 11 How. 669..... 60
Binkert v. Wabash R. Co., 98 Ill. 205..... 30
Boise Artesian etc. Co. v. Boise City, 213 U. S. 276 .....61, 69
Cooper v. Corbin, 105 Ill. 224..... 30
Corpus Juris, Vol. 1, page 618..... 67
De Bevoise v. H. & T. C. Co., 67 N. J. Eq. 472.... 67
Equitable Life Assur. Soc. v. Brown, 213 U. S. 25 63
Fowle v. Lawrason's Exrs., 5 Pet. 495..... 67
Gaar, Scott & Co. v. Hurd, 92 Ill. 315..... 30
Greene v. L. & I. R. Co., 244 U. S. 499.....16, 17
Hale v. Allinson, 188 U. S. 56..... 68
Hill v. Figley, 23 Ill. 364..... 30
Ind. Mfg. Co. v. Koethe, 188 U. S. 681..... 63
Javierre v. Central Altagracia, 217 U. S. 502..... 63
Judicial Code..... 59
Keokuk & Hamilton Bridge Co. v. Salm, No. 130, Oct. Term, 1921.....6, 36, 46, 56
Loeber v. Leininger, 175 Ill. 484..... 30

Louisville Water Co. v. Commonwealth, 132 Ky. 311 26
People ex rel. v. Campbell, 204 Ill. App. 226..... 35
People ex rel. v. Keokuk & Ham. Bridge Co., 287 Ill. 246..... 36
People ex rel. v. Keokuk & Ham. Bridge Co., 295 Ill. 176..... 36
People ex rel. v. Mix, 106 Ill. 425..... 35
People ex rel. v. St. L. Merchants Bridge Co., 282 Ill. 408..... 36
Raymond v. Chicago U. T. Co., 207 U. S. 20.....47, 49, 51, 63
Rees v. Watertown, 19 Wall. 107..... 61
Robinson v. Campbell, 3 Wheat. 212..... 59
San. Dist. v. Young, 285 Ill. 351..... 36
Scott v. Neely, 140 U. S. 106..... 60
Singer Stewing Mach. Co. v. Benedict, 229 U. S. 481.....58, 62
So. Pac. Co. v. United States, 200 U. S. 241..... 63
United States v. Bitter Root Dev. Co., 200 U. S. 451.....63, 70
United States v. Howland, 4 Wheat. 108..... 59
Van Wyck v. Knevals, 106 U. S. 360..... 61
Wehrman v. Conklin, 155 U. S. 314..... 59
Wells-Fargo & Co. v. Nevada..... ....41, 42, 55

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1922.

W. FISH WILSON, County Collector of Taxes of the County of Marion; RICHARD FARRELL, County Collector of Taxes of the County of Clinton; WILLIAM H. PORTER, County Collector of Taxes of the County of Washington; JAMES H. THIMMING, County Collector of Taxes of the County of Perry, and JAMES H. McGUIRE, County Collector of Taxes of the County of Randolph, in the State of Illinois, Appellants, vs. ILLINOIS SOUTHERN RAILWAY COMPANY, WILLIAM W. WHEELOCK, as Receiver of the Property of the ILLINOIS SOUTHERN RAILWAY COMPANY; WILLIAM T. ABBOTT, Trustee of the Bondholders of the ILLINOIS SOUTHERN RAILWAY COMPANY and the MISSOURI AND ILLINOIS RAILROAD COMPANY, Appellees.	Appeal from the District Court of the United States for the Eastern District of Illinois.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

This is an appeal from the District Court of the United States for the Eastern District of Illinois from an order and decree overruling a motion to dismiss the bill of complaint and from a final decree enjoining appellants, as county collectors of taxes, from applying to the county courts of their respective counties for a judgment for sale for certain taxes assessed

against the property owned by appellees, or some of them. The taxes involved aggregate approximately $115,000.00.

On the third day of June, A. D. 1921, the Illinois Southern Railway Company, a railroad corporation, organized under the laws of the State of Illinois, jointly with William W. Wheelock, as Receiver of the property of the Illinois Southern Railway Company, William T. Abbott, trustee of the bondholders of the Illinois Southern Railway Company and the Missouri and Illinois Railroad Company, filed their joint bill of complaint in the District Court of the United States for the Eastern District of Illinois against appellants, as county collectors of taxes of the five counties in the State of Illinois through which the line of railroad of said railway company extends.

The bill sought to enjoin appellants, as such county collectors, from collecting the general taxes extended against the property of the railway company for the years 1917, 1918, 1919 and 1920, by the legal processes provided by the statutes of the State of Illinois.

The bill alleged, as a basis for the relief sought, that during the above years the statutes of the State of Illinois required that all property within the state should be valued, for the purpose of assessment, at its full, fair cash value; that in the years 1917 and 1918 one-third, and in the years 1919 and 1920 one-half of the full fair cash value, when ascertained in

the manner provided by law, should be taken as the assessed value on which taxes should be extended.

The bill further alleged that in the years 1917 and 1918 the State Board of Equalization was the legally constituted body authorized to make the original valuation and assessment of railroad property for the purpose of taxation; that in the years 1919 and 1920, by statute then in force, the State Tax Commission was the lawful successor of the State Board of Equalization and as such was the legally constituted body authorized to make the original valuation and assessment of railroad property for taxation in those years.

It was further alleged that during said four years it was the duty of the State Board of Equalization and the State Tax Commission, in making the valuation and assessment of the property of the Illinois Southern Railway Company, to first ascertain the full fair cash value thereof, and, having found such full fair cash value, to then equalize such value by reducing it below the full fair cash value so found and fixed so as to obtain the same rate of valuation as that at which other property was valued and assessed by the local county assessing officers throughout the state.. That having found such full fair cash value, equalized and reduced in accordance with the above plan, to then take one-third of such valuation for the years 1917 and 1918 and one-half for the years 1919 and 1920 as the basis for the assessment.

It was further alleged in the bill that the local assessors throughout the state, in assessing property in the four years in question, first fixed the full fair cash value thereof and then arbitrarily reduced such fair cash value to less than 70 per cent thereof, and then in the years 1917 and 1918 took one-third and in the years 1919 and 1920 one-half of the 70 per cent of such full value, as the assessed value, as the basis for taxation.

It was then alleged that the State Board of Equalization for the years 1917 and 1918 fraudulently and unlawfully valued and assessed the property of the said Railway Company for the year 1917 at 5.82 times, and for the year 1918 5.93 times its full value, and that the said Tax Commission fraudulently and unlawfully valued and assessed such property at 5.42 and 3.67 times its full fair cash value for the years 1919 and 1920, respectively.

In other words, the grounds alleged as the basis for the relief asked was that property generally throughout the state was assessed at less than 70 per cent of its full fair cash value by the local assessors, and that the assessments on complainants' property for the years involved was many times its full fair cash value. That by reason of the alleged grossly excessive, discriminatory and fraudulent valuation the complainants were deprived of their prop-

erty without due process of law and were denied the equal protection of the law in violation of the Fourteenth Amendment.

It was further alleged, as a basis for relief, that the assessment so made was in violation of the section of the Constitution of the State of Illinois which provides "that every person and corporation shall pay a tax in proportion to the value of his, her or its property."

There was no averment in the bill that the property in question was assessed at a higher rate than other railroad property, or higher than other property valued and assessed by the State Board of Equalization or the Tax Commission, but the alleged discrimination was based solely upon the assessment of property which was assessed by local assessors as compared with the valuation and assessment of property assessed by the State Board of Equalization and the Tax Commission.

There is no diversity of citizenship alleged and the sole grounds of federal jurisdiction is the alleged violation of the due process and equal protection clauses of the Fourteenth Amendment.

Upon the filing of the bill a temporary restraining order was granted and entered. This was followed by a temporary injunction.

The appellants appeared and filed their joint and several answer to the bill. The case was referred to

a Special Master to take and report the testimony to the Court.

While the suit was pending in this status and before any evidence was taken, the opinion in the case of **Keokuk & Hamilton Bridge Company v. Salm**, No. 130, October Term, 1921, was announced (not yet reported). The principles announced in that case seemed to be conclusive of the issues in this case, and thereupon appellants filed their motion to set aside the order of reference, for leave to withdraw their answer and to dismiss the suit for want of equity on the face of the bill, and upon the further ground that the bill showed on its face that the complainants had an adequate remedy at law.

The Court allowed the motion to set aside the order of reference, and that order was set aside. The Court also granted leave to withdraw the answer, and the answer was withdrawn. But the Court overruled and denied the motion to dismiss the suit. Appellants elected to stand by their motion to dismiss and refused to plead further. An order pro confesso was entered, which was followed by a final decree, pursuance to Equity Rule No. 17.

The grounds for dismissal, set up in the motion, were as follows:

> "It appears from the face of the bill of complaint filed herein that the only alleged invalid-

ity of the taxes sought to be enjoined by the decree of this Court consist wholly of discriminatory overvaluation of the property of the complainants.

It further appears from the allegations of said bill of complaint conclusively that the complainants have an adequate remedy at law, and that no grounds are stated in said bill of complaint that would justify a court of equity in taking jurisdiction of the matters therein charged and stated" (Rec., p. 78).

Exceptions have been duly preserved to the overruling of the motion to dismiss the entry of the order pro confesso and the final decree. The appeal to this court has been perfected by all of the defendants in the court below.

The only question arising on the record in this court is whether on the face of the bill, appellees have an adequate remedy at law and whether the facts alleged are sufficient to constitute the taking of property without due process of law or a denial of the equal protection of the law, in violation of the due-process clause and the equal-protection clause of the Fourteenth Amendment.

Specification of Errors Relied Upon.

In the record, there are ten specifications or assignments of error, as follows:

I.

"That the United States District Court for the Eastern District of Illinois erred in overruling the motion to dismiss the bill of complaint herein for want of equity.

II.

That the United States District Court for the Eastern District of Illinois erred in not sustaining the motion of defendants to dismiss the bill of complaint herein for want of equity.

III.

That the United States District Court for the Eastern District of Illinois erred in finding and holding that the said bill of complaint was sufficient to give the Court jurisdiction to grant equitable relief.

IV.

That the United States District Court for the Eastern District of Illinois erred in refusing to hold that the allegations of the bill of complaint

herein were not sufficient to give the Court jurisdiction to grant equitable relief.

V.

That the United States District Court for the Eastern District of Illinois erred in refusing to dismiss the bill of complaint herein for want of equity.

VI.

That the United States District Court for the Eastern District of Illinois erred in holding that the bill of complaint herein was sufficient on its face to give the Court jurisdiction to grant equitable relief.

VII.

That the United States District Court for the Eastern District of Illinois erred in refusing to hold that under the allegations of the bill of complaint herein the complainants had an adequate remedy at law.

VIII.

That the United States District Court for the Eastern District of Illinois erred in refusing to hold that said bill of complaint was insufficient to give the Court jurisdiction to authorize the Court to grant relief either under the due-process clause or the equal-protection clause of the constitution.

IX.

That the United States District Court for the Eastern District of Illinois erred in refusing to dismiss said bill of complaint for want of equity and on the ground that the said bill shows on its face that the complainants had an adequate remedy at law.

X.

That the United States District Court for the Eastern District of Illinois erred in denying and overruling the motion to dismiss the bill of complaint herein for the reason that the same was not sufficient in law to give the Court jurisdiction or to entitle the complainants to equitable relief."

The several assignments of error, while couched in different language, all raise the one legal question, viz.: Are the facts alleged in the bill sufficient to give a federal court equitable jurisdiction to enjoin the collection of the taxes in question on the ground that such collection would amount to a taking of the property of appellees without due process of law and constitute a denial of the equal protection of the laws, and are the facts, as stated in the bill, sufficient to show that the taxpayer has no adequate remedy at law. Consequently, the one specification of error re-

lied upon in this court for reversal may be briefly stated as follows:

The error of the court below in overruling and denying the motion to dismiss the suit for want of equity appearing on the face of the bill, thereby holding that the facts alleged were sufficient to give a federal court of equity jurisdiction to enjoin the collection of taxes by the process of law, provided by location of the tax for the reason that the enforcement of the collection of taxes by the process of law, provided by the statute of the State of Illinois, would consttute the taking of property without due process of law and a denial of the equal protection of the law, and that the complainants have no adequate remedy at law.

Upon this one specification and legal proposition we rest the case in this court, and in support of this proposition we shall insist:

That the statutes of the State of Illinois provide a complete scheme of judicial procedure for the enforcement of the collection of taxes assessed against railroad property, and as a part of that scheme adequate judicial hearings are provided in which all questions concerning the validity of the tax may be litigated by the taxpayer in a court of law; that these hearings afford an adequate remedy at law for the correction of all errors and wrongful or fraudu-

lent acts of the assessing officers in valuing property for taxation.

Under the statutes of the State of Illinois, a collector cannot seize the property of a railroad company for the nonpayment of taxes, but before such property can be subjected to the payment of taxes the collector must apply to a judicial tribunal of the county in which the property is located for a judgment sustaining the tax, and only after such judgment is obtained can he proceed against the property.

This is a judicial proceeding wherein process issues and an opportunity is given to the taxpayer and all persons having any interest in the property to appear and have a full hearing in which all questions affecting the validity of the tax, including any alleged fraudulent and discriminatory overvaluation, may be fully litigated and determined.

Further, any person interested in the property may appeal from the judgment of that Court to the Supreme Court of the state, where the decision of the County Court on all questions of both law and fact may be reviewed. Only after a final judgment sustaining the tax is thus obtained can the collection of the tax be enforced by proceeding against the property.

It is our position that this furnishes all the protection guaranteed by the Fourteenth Amendment and

also affords a complete and adequate remedy at law. These remedies are open to all taxpayers and persons having any interest in the property, and there is no denial of the equal protection of the law.

There being no diversity of citizenship and the only ground on which jurisdiction of the federal court is based being the supposed violation of the due-process and equal-protection clauses of the Fourteenth Amendment, and the facts alleged in the bill showing clearly that the complainants did have a complete and adequate remedy at law, there was no jurisdiction in the court below and the motion to dismiss should have been sustained.

BRIEF OF ARGUMENT.

In the presentation of this case it becomes important to trace, as briefly as the facts will permit, the plan and process by which taxes on the property of railroad companies are levied and collected under the statutes of the State of Illinois.

Under the statutes of Illinois all railroad property, and the property of certain other corporations, is assessed by the State Tax Commission (prior to 1919 by the State Board of Equalization). All other property is assessed by local assessors, elected in each township in the several counties in the state.

Paragraph 107 of Chapter 120 of Cahill's Revised Statutes of Illinois, page 2881, under the heading of "Duties of Tax Commission," provides:

> "The Tax Commission shall * * *
>
> (5) "Assess the railroad property denominated 'Railroad Track' and 'Rolling Stock.'
>
> (6) "Assess and value, in the manner provided by law, the capital stock, including the franchise of all companies or associations, now or hereafter, incorporated under the laws of this state, except companies and associations organized for purely manufacturing and mercantile purposes, or for either of such purposes, or for the publishing of newspapers, or for the improving and breeding of stock, or for the purpose of

banking, including any of such property as may have been omitted from assessment in any year or years, or which from defective descriptions has not paid any taxes for any year or years."

Prior to July 1, 1919, the same powers and duties were lodged with the State Board of Equalization, which was, on said date, abolished by statute and succeeded by the Tax Commission.

The taxes in controversy in this case were extended on assessments made by the State Board of Equalization in the years 1917 and 1918, and by the Tax Commission in the years 1919 and 1920 under subdivision five (5), supra, on railroad property, designated in the statute as "Railroad Track" and "Rolling Stock," owned by the Illinois Southern Railway Company in those years. There was no assessment in those years on franchise or capital stock under subdivision six (6), supra.

By virtue of the above statute the assessments in question, for the purpose of taxation, were made at the times and in the manner provided by law. There is no complaint that this was not done. In fact the validity and legality of every step taken, and every act of the assessing authorities, as well as the legality of the tax itself, except as to the amount, was recognized by appellees paying all the taxes extended on the assessments in question, before the bill herein

was filed, except the portion of such taxes which it was claimed was based upon the alleged overvaluation (Rec., pp. 43-46).

To again state the issues briefly, the averment in the bill upon which the claim for relief is based, is that the property of the Railway Company was assessed during the four years in question by the state assessing officers in excess of from 300 per cent to 500 per cent of its actual value, while other property throughout the state was assessed by the local township assessors at less than 70 per cent of its actual value.

The motion to dismiss admits the truth of this averment, and the case must be tried in this court with this admission in the record.

Admitting this allegation to be true, let us consider the legal effect of the alleged discriminatory overvaluation, with a view to determine the legal remedy of a taxpayer who finds himself in that situation.

It is apparent that the bill in this case was framed on the opinion in **Greene v. Louisville & Interurban Railroad Company, 244 U. S. 499.** If this case comes within the principles announced in the **Greene** case, supra, the motion to dismiss was properly overruled, and the order and decree of the lower court must be affirmed.

Before attempting to apply the rules announced in the **Greene** case to the facts averred in the bill, in the present case, it will be profitable to first analyze, somewhat in detail, the facts alleged in the **Greene** case. This will enable us to better determine just what this court held in that case.

In that case, as in the case now before the Court, a motion to dismiss was overruled by the court below. The motion in that case, as well as in the case at bar, was equivalent to a general demurrer to the bill. Its effect was to admit all the facts well pleaded.

In the **Greene** case, after alleging the discriminatory overvaluation claimed in substantially the same language as that used in the bill in this case, the complainant, by paragraph 9 of the bill, alleged as the grounds entitling it to equitable relief as follows:

> "The said Bosworth, Rhea and Crecelius threaten to, and unless immediately enjoined and restrained by this Court will (although they have not yet done so), certify to the county clerks of Jefferson, Shelby and Oldham counties the amounts claimed to be due to said counties and the taxing districts thereof by reason of the valuation aforesaid, which said Bosworth, Rhea and Crecelius have assumed to make as above stated, and the said county clerks will thereupon certify said assessments, respectively, to the tax collectors of said counties and the taxing districts

therein for collection, and said collecting officers will thereupon proceed to make collections and will institute unwarranted, vexatious and multitudinous suits, actions and proceedings at law against the plaintiff, and will from time to time institute and prosecute such suits, actions and proceedings, to the great annoyance and irreparable, injury, cost and damage of the plaintiff; and unless immediately enjoined and restrained by this court the said Bosworth or the said Likens will enter into the account with the said Treasurer of the State of Kentucky the amount of said taxes based upon the valuation aforesaid; and the said James Garnett as Attorney-General and M. M. Logan, Charles H. Morris and O. S. Hogan as assistants, and said Victor A. Bradley and said Wiley C. Marshall will institute civil or penal actions or procure indictments against the plaintiff, based upon its assumed or supposed delinquency in the payment of taxes claimed to be due upon the illegal and unauthorized assessment aforesaid, and will bring such actions or proceedings, or procure such indictments from day to day or from time to time with the purpose of forcing the plaintiff to pay the illegal and unjust demands asserted against it on behalf of said commonwealth, and said local taxing districts, based upon the aforesaid valuation, which said defendants have assumed to make as aforesaid, and the apportionment and certification thereof which will be made as aforesaid. The penalties for the alleged delinquency of the plaintiff under section 4091 of the Kentucky statutes are so ex-

treme and enormous as to render it inequitable and unjust to require plaintiff to defend all or any of such actions or proceedings, and, therefore, the plaintiff is without any adequate remedy at law for protecting its rights or presenting its defenses to said illegal claims made by defendants; its remedy is only in equity, and unless a preliminary injunction is issued herein and be made perpetual upon final hearing, great and irreparable injury will result to plaintiff which will be subjected to said numerous actions and prosecutions, whereby it will be stripped of its property without due process of law; and unless a temporary restraining order issues immediately the said defendants will make the certifications to the said county clerks and promptly proceed to collect the amount of such illegal assessment and will seize and otherwise appropriate the plaintiff's property, to the destruction thereof and the destruction of plaintiff's business of transportation. The unauthorized and illegal valuation aforesaid constitutes a cloud, and, as claimed by defendants, constitutes a lien upon the plaintiff's property in the Commonwealth of Kentucky, and unless the defendants are enjoined and restrained by this court numerous, repeated and vexatious suits will be instituted to enforce or foreclose such lien, claimed as aforesaid by defendants, in the endeavor to force payment of the aforesaid illegally claimed taxes, which will be asserted by the defendants and local officers to be due the commonwealth and said counties and taxing districts, to the great and irreparable injury and damage of the plaintiff."

The corresponding allegations in the case at bar are as follows:

> "Said defendants, and each of them, threaten to prosecute their several applications for judgments against the said property for the remaining illegal, unconstitutional and void taxes aforesaid, and to obtain and enforce judgment against the said railroad properties, and indirectly against these complainants, thereby taking their property and the property of the railway companies without due process of law, and denying to them the equal protection of the law in violation of the Fourteenth Amendment to the Federal Constitution by means and force of the proceedings aforesaid, and by force of the said unconstitutional, discriminatory and fraudulent assessments and illegal levies and extension of taxes aforesaid.
>
> "Your orators further aver that in the proceedings aforesaid, and in the manner and form aforesaid, the State of Illinois, by and through the action of its said Board of Equalization, State Tax Commission and other taxing officers as aforesaid, is threatening to, and will, unless said taxing officers are restrained by this Honorable Court, deny to your orators the equal protection of the Constitution and laws and take from them their property without due process of law, in violation of the Fourteenth Amendment to the Constitution of the United States, and in violation of the provisions of the Constitution of the State of Illinois requiring that every person and

corporation shall pay a property tax in proportion to the value of his, her or its property as aforesaid'' (Rec., p. 46).

The prayer of the bill in the present case, omitting the formal part, asks that an injunction be issued against appellants,

> ''commanding them, and each of them, and their deputies, agents, clerks, servants, assistants and attorneys to refrain and desist, on the first day of the term of the county court in each of their several counties at which judgment for taxes on delinquent lands and lots may be prayed, from reporting to the county clerks and clerks of county courts of each of said several counties any land and lots or railroad property belonging to the complainants, or either of them, which was and is all or a part of the properties aforesaid lately owned or controlled by the said complainants, or either of them, and assessed to and taxed in the name of the Illinois Southern Railway Company, however described or known, and from including in any delinquent tax list for the year 1920 in any or either of said counties on the 1st day of May, 1921, or at any other time, or asking or praying the county court in either of said counties to render judgment against the said railroad property, lands and lots, or any of the complainants, or any or either of them, for delinquent taxes for the years 1917 to 1920, inclusive'' (Rec., p. 46).

The language of the above quoted portion of the bill of complaint referring to the "taxing officers" is surplusage because no taxing officer is made a party to the suit and no relief is asked against anyone except the five county collectors of taxes who are named parties defendant to the bill.

In the **Greene** case this Court found it unnecessary to pass on the questions raised under the Fourteenth Amendment, but sustained the lower court upon the grounds claimed for equitable relief under the Constitution and laws of the State of Kentucky. While it does not specifically appear from the opinion in so many words, it is apparent that the equity jurisdiction was sustained solely because of the allegations contained in paragraph nine of the bill of complaint. It is elementary that unless the remedies at law are inadequate equity will not intervene. In the **Greene** case it was alleged that unless equitable relief, by injunction, was granted, the defendants would do the things alleged in paragraph nine of the bill, quoted above. This is the material averment in the **Greene** case, and the one which clearly distinguishes it from the case at bar.

In the present case the threatened acts sought to be enjoined, are set out in the bill as above quoted, and no other ground of equitable jurisdiction or equitable relief is attempted to be alleged in the bill.

There is no averment or claim that the county collectors could institute any suit, that they could seize the property, that they could prosecute the complainants, either civilly or criminally, for failure to pay the taxes, or that they could do anything which, in any way, could interfere with the property, or that could embarrass or injure the complainants in their possession, ownership, use and enjoyment of the property.

In the **Greene** case, it does not appear that in any of the threatened suits, actions, proceedings, indictments or prosecutions alleged in the bill, authorized by the laws of Kentucky, the taxpayer would have any right to defend against the alleged over-valuation, the validity of the tax, or the legality of the assessment, nor does it appear in that case that there was any tribunal or administrative body to which the taxpayer could apply for relief against the alleged over-valuation upon which the taxes there in question were based.

Indeed, the statutes of Kentucky make no provision for contesting the legality of the tax and no provision for a review of the finding of the Board of Valuation and Assessment or of any alleged over-valuation, either before a judicial or an administrative body. A brief reference to the statutes of that state will be enlightening in this connection.

Section 4077 of Carrol's Statutes of Kentucky, 1915, creates a Board of Valuation and Assessment, composed of the Auditor, Treasurer and Secretary of State.

The same section provides for a franchise tax to be paid to the state and local franchise taxes, based on the value of the franchise, to be paid to the county, city, town or taxing district, against all Public Service corporations doing business within the state. It was this franchise tax that was involved in the case of **Greene v. Louisville & I. R. Co., supra.**

Section 4078 provides, that each such corporation shall make an elaborate, detailed report and return to the Board of Valuation and Assessment, showing the value of its franchise.

Section 4079 authorizes the Board of Valuation and Assessment, created by **Section 4077,** to fix the value of such franchise for the purpose of taxation.

Section 4083 provides, that any corporation assessed may, within thirty days after it receives notice of the amount of the assessment, petition the Board of Valuation and Assessment to reduce the assessment so made by it. This section expressly provides, that at the expiration of thirty days, after notice of the assessment is given, the action of the board shall be final. No appeal or right of review is provided for

before either a judicial or an administrative body, other than the petition for reduction before the Board of Valuation and Assessment, which made the assessment.

Section 4084 provides, that at the expiration of the thirty days given, within which a petition for reduction may be filed, under section 4083, supra, that the value so fixed shall be certified to the several County Clerks and by them to the respective collecting officers of the several taxing districts.

Section 4049 provides, that the state tax assessed against any corporation, company or association under the statute in question, shall be due and payable thirty days after notice of the same has been given said corporation, company or association by the Auditor; and all county, municipal, school and other taxes shall be due and payable thirty days after notice of the amount of said tax is given by the officer whose duty it is to collect the same. This refers only to the franchise tax.

Section 4091 provides, that every such corporation, company or association failing to pay its franchise taxes, after receiving thirty days notice thereof, shall be deemed delinquent and a penalty of 10 per cent on the amount of the tax shall attach and thereafter such tax shall bear interest at the rate of 10 per cent per annum.

It provides, further, that any such corporation, company or association failing to pay such taxes, penalty and interest, after becoming delinquent, shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined $50.00 for each day the same remains unpaid, to be recovered by indictment or civil action of which the Franklin Circuit Court shall have jurisdiction.

The fine imposed by the above statute on a delinquent taxpayer is in addition to the penalty and must be recovered in a separate action.

> Louisville Water Co. v. Commonwealth, 132 Ky. 311.

In the case at bar, the situation is entirely different. It is alleged in the bill of complaint in this case that the County Collectors, unless enjoined, would apply to the County Courts of their respective counties for a judgment sustaining the tax and an order of sale. It further appears from the bill that under the statutes of Illinois the Collectors could do nothing more. This is what they were enjoined from doing.

Paragraph 4 of the final decree finds:

> "That all other taxes, interests, penalties and costs charged and extended against the property of the complainants for the years 1917, 1918,

1919 and 1920, in each of the several Counties of Marion, Clinton, Washington, Perry and Randolph, in the State of Illinois, are excessive, fraudulent and void, and were extended upon the assessments made by the Board of Equalization for the years 1917 and 1918, and by the Tax Commission of the State of Illinois for the years 1919 and 1920, in violation of the Fourteenth Amendment to the Constitution of the United States of America, in that in the assessment, levy and extension of said tax the complainants were denied the equal protection of the law by the State Board of Equalization and the taxing officers of the State of Illinois and the assessment levy and extension of said tax was, and is, an attempt to, and would take the property of the said complainants without due process of law" (Rec., p. 82).

By the final decree the appellants are enjoined as follows:

"from on the first day of any term of the County Court of their several and respective counties, at which judgment for delinquent taxes upon lands, lots and railroad property may be applied for and prayed on account of delinquent taxes, interests, penalties and costs for the years 1917, 1918, 1919, 1920, from reporting to the County Clerks and clerks of the County Courts of their respective and several counties, any lands, lots or railroad property belonging to, or assessed to, or in the name of the Illinois Southern Railway

> Company, or the Missouri & Illinois Railroad Company for delinquent taxes, special assessments, interests, penalties or costs for any or either of the years 1917, 1918, 1919 and 1920, or from applying for or praying any judgment against the said Illinois Southern Railway Company or the Missouri & Illinois Railroad Company, or the property of either of them for any delinquent taxes for the years aforesaid, and from bringing any suit or suits for the collection of said taxes, interests, penalties or costs for said years other than the sums already paid and accepted by said defendants for each of said counties" (Rec., p. 85).

The alleged threatened action of the defendants set up in the bill, and sought to be enjoined and finally enjoined, was the application by the several defendants to the county courts of their respective counties for a judgment sustaining the taxes, and for an order of sale, in order to subject the property to the payment of the taxes. This is the only relief asked, and the only relief granted.

It will be convenient at this point to digress and consider in this connection the process provided by the statutes of Illinois for subjecting railroad property to the payment of taxes extended against it.

After providing for the extension of taxes on the collector's books in each year on the assessments made by the proper authorities, the statute pro-

vides, by **Paragraphs 154 and 155 of Chapter 120, Cahill's Revised Statutes of Illinois, page 2889,** as follows:

> Par. 154. "To each town or district collector's book a warrant, under the hand of the county clerk and seal of his office, shall be annexed, commanding such town or district collector to collect from the several persons named in said town or district collector's books, the several sums of taxes therein charged opposite their respective names."
>
> Par. 155. "In all cases the warrant shall authorize the town or district collector, in case any person named in such collector's books shall neglect or refuse to pay his **personal property tax** to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such town or district collector on or before the tenth day of March next ensuing."

Par. 269, Chap. 120, Cahill's Revised Statutes, page 2913, provides:

> "The taxes assessed upon personal property shall be a lien upon the personal property of the person assessed from and after the time the tax books are received by the collector."

The lien against the personal property of the tax-

payer is completed upon the delivery of the collector's book.

Gaar, Scott & Co. v. Hurd, 92 Ill. 315.

This lien is not confined to the property assessed, but extends to all of the personal property owned by the taxpayer on the date the books are delivered to the collector.

Hill v. Figley, 23 Ill. 364;
Binkert v. Wabash R. R. Co., 98 Ill. 205;
Loeber v. Leininger, 175 Ill. 484;
Cooper v. Corbin, 105 Ill. 224.

The above sections of the statute apply only to personal property tax and not to taxes extended against real estate or railroad property. These sections have nothing to do with taxes of the character here involved, and are only material for the purpose of the comparison hereinafter made with the case of **Raymond v. Chicago Union Traction Company.**

Paragraph 190 of the same chapter, page 2895, provides:

> "Each town or district collector at the time of returning his tax book to the county collector, shall make affidavit, to be entered upon such book and subscribed by the collector, that the taxes charged against each tract or lot, or assessment of personal property remaining due and un-

paid at the date of making such affidavit in each case where there does not appear in the proper column the amount of such taxes as having been paid to such collector, and the date of payments and the names of any person as having paid the same; which affidavit shall be prima facie evidence of the facts therein stated."

Taxes extended against railroad property, including both "railroad track" and "rolling stock" are returned delinquent and handled under **paragraph 190**, supra, the same as taxes extended on other real estate. This appears from the bill, and it is unnecessary to quote the statute or the decisions of the State Supreme Court in this respect, at length.

Paragraph 56 of the same chapter, page 2872, provides:

"The county clerk shall procure, at the expense of the county, a record book, properly ruled and headed, in which to enter the railroad property of all kinds, as listed for taxation, and shall enter the valuations as assessed, corrected and equalized, in the same manner provided by this act; and against such assessed, corrected or equalized valuation, as the case may require, the county clerk shall extend all the taxes thereon for which said property is liable. And at the proper time fixed by this act for delivering tax books to the county collector, the clerk shall attach a warrant, under his seal of office, and

> deliver said book to the county collector, upon which the said county collector is hereby required to collect the taxes therein charged against railroad property, and pay over and account for the same in the manner provided in other cases. Said book shall be returned by the collector and be filed in the office of the county clerk for future use."

Taxes extended against railroad property, including "railroad track" and "rolling stock," which are not paid, are returned as delinquent with other real estate under **paragraph** 190, supra, and are handled in the same manner.

After the delinquent lists of real estate and railroad property are prepared according to the foreging statute, the county collector is required to make application to the Court for judgment and an order of sale.

Paragraph 200 of the same chapter, page 2897, provides for publication of the delinquent list and notice to all persons interested in the property of the amount of the tax and the time and place when and where application will be made to the County Court for judgment.

That section is as follows:

> "At any time after the first day of April, next, after such delinquent taxes and special assess-

ments on lands and lots shall become due, the collector shall publish an advertisement, giving notice of the intended application for judgment for sale of such delinquent lands and lots in a newspaper printed and published in his county, if any such there be, and if there be no such paper printed and published in his county, then in the nearest newspaper in this state to the county seat of such county. Said advertisement shall be once published at least three weeks previous to the term of the County Court at which judgment is prayed, and shall contain a list of the delinquent lands and lots upon which the taxes or special assessments remain due and unpaid, the names of owners, if known, the total amount due thereon, and the year or years for which the same are due. Said collector shall give notice that he will apply to the County Court at the ..... term thereof, for judgment against said lands and lots for said taxes, special assessments, interest and costs, and for an order to sell said lands and lots for the satisfaction thereof; and shall also give notice that, on the ..... Monday next succeeding the day fixed by law for the commencement of such term of said County Court, all the lands and lots for the sale of which an order shall be made, will be exposed to public sale at the building where the County Court is held in said county, for the amount of taxes, special assessments, interest and cost due thereon; and the advertisement published according to the provisions of this section shall be deemed to be sufficient notice of the intended application for judgment and of the sale of lands

and lots under the order of said court. Where the publisher of any paper that may have been selected by the collector shall be unable or unwilling to publish such advertisement, the collector shall select some other newspaper, having due regard to the circulation of such paper. Provided, that in cities having a population of one hundred thousand or more by the last preceding census of the United States or of this state separate advertisement may be made giving notice of an intended application for judgment and for an order of sale on account of delinquent special assessments at any time after the first day of August next after such special assessments shall have become delinquent, the procedure in such case to be in all other respects except as to the time of making advertisement, application for judgment and sale, the same as in the case of delinquent general taxes."

Paragraph 209 of the same chapter, page 2900, prescribes the proceedings in court on the application for judgment as follows:

Par. 209. "The court shall examine said list, and if defense (specifying, in writing, the particular cause of objection) be offered by any person interested in any of said lands or lots, to the entry of judgment against the same, the court shall hear and determine the matter in a summary manner, without pleadings, and shall pronounce judgment as the right of the case may

be. The court shall give judgment for such taxes and special assessments and penalties as shall appear to be due, and such judgment shall be considered as a several judgment against each tract or lot, or part of a tract or lot, for each kind of tax or special assessment included therein; and the court shall direct the clerk to make out and enter an order for the sale of such real property against which judgment is given, which shall be substantially in the following form * * *."

This is a judicial proceeding, and the advertisement or notice required to be published under **Paragraph 200, supra**, is the process or summons to all persons interested in the property to appear in the County Court at the time and place fixed in the notice and make any defense which they have to the validity of the tax or the legality of the proceeding.

People v. Mix, 106 Ill. 425, 428.

The delinquent list of property on which taxes have not been paid stands as the declaration, and the published notice under **Paragraph 200, supra**, is the summons or process.

People ex rel. v. Campbell, 204 Ill. App. 226.

This proceeding in the County Court is a civil suit for the collection of a debt.

People ex rel. v. St. Louis Merchants Bridge Co., 282 Ill. 408.

In the proceeding in the County Court under the sections above quoted, upon application by the collector for judgment, the owner or any person interested in the property may appear and defend on any legal ground; among others, that the assessment was deliberately or fraudulently discriminatory, and hence the tax is void.

Keokuk & Hamilton Bridge Co. v. Salm, No. 130, Oct. Term, 1921, U. S. Sup. Court;
People ex rel. v. Keokuk & Hamilton Bridge Co., 287 Ill. 246;
People ex rel. v. Keokuk & Hamilton Bridge Co., 295 Ill. 176.

From the judgment of the County Court on the objections filed by any person interested in the property an appeal may be taken to the Supreme Court of the state, where all questions of law and fact may be reviewed.

Sanitary District v. Young, 285 Ill. 351.

This appeal is provided for by **paragraph 210** of the same chapter, page **2901**, which reads as follows:

"Par. 210. Appeals from the judgment of the court may be taken during the same term to the supreme court on the party praying an appeal executing a bond to the People of the State of Illinois, with two or more sureties to be approved by the court, in some reasonable amount to be fixed by the court, conditioned that the appellant will prosecute his said appeal with effect, and will pay the amount of any tax assessment and cost which may finally be adjudged against the real estate involved in the appeal by any court having jurisdiction of the cause. But no appeal shall be allowed from any judgment for the sale of lands or lots for taxes, nor shall any writ of error to reverse such judgment operate as a supersedeas unless the party praying such appeal or desiring such a writ of error shall, before taking such appeal or suing out such writ of error, deposit with the county collector an amount of money equal to the amount of the judgment and costs. If in case of an appeal or suing out a writ of error the judgment shall be affirmed in whole or in part the supreme court shall enter judgment for the amount of the taxes with damages, not to exceed 10 per cent, and order that the amount deposited with the collector, as aforesaid, or so much thereof as may be necessary, shall be credited upon the judgment so rendered and execution issue for the balance of said judgment, damages and costs. The clerk of the su-

preme court shall transmit to said county collector a certified copy of the order of affirmance, and it shall be the duty of the collector, upon receiving the same, to apply so much of the amount deposited with him, as aforesaid, as shall be necessary to satisfy the amount of the judgment of the supreme court and to account for the same as collected taxes. If the judgment of the county court shall be reversed and the cause remanded for a rehearing, and if, upon the rehearing, judgment shall be rendered for the sale of the land or lots for taxes, or any part thereof, and such judgment be not appealed from, or a writ of error prosecuted with supersedeas issued thereon, as herein provided, the clerk of the county court shall certify to the county collector the amount of such judgment, and thereupon it shall be the duty of the county collector to certify to the county clerk the amount deposited with him as aforesaid, and the county clerk shall credit the said judgment with the amount of such deposit, or so much thereof as will satisfy the judgment, and the county collector shall be chargeable with, and accountable for, the amount so credited, as collected taxes. Nothing herein contained shall be construed as requiring an additional deposit in case of more than one appeal or writ of error being prosecuted in said proceedings. If, upon a final hearing, judgment shall be refused for the sale of lands or lots for the taxes, or any part thereof, the collector shall pay over to the party who shall have made said deposit, or his legally authorized agent or rep-

resentatives, the amount of the deposit, or so much thereof as shall remain after the satisfaction of the judgment against the premises in respect of which such deposit shall have been made."

We have reviewed the above statutes of Illinois and set them out in this connection for the purpose of showing that the **Greene** case, supra, presented to this Court an entirely different set of facts, to which the principles of law therein announced were applied, from the facts in the case at bar.

It is clearly apparent from the opinion in the **Greene** case, supplemented by a reference to paragraph 9 of the bill of complaint in that case, which we have quoted above, that the property owner under the laws of Kentucky had no remedy save in a court of equity.

The bill in this case, however, presents no such state of facts. The only thing the collectors could do, under the statutes of Illinois, was to apply to the County Court for a judgment confirming the tax and an order of sale. This is what they are enjoined from doing by the final decree. Nothing else. They could not seize the property, nor in any way interfere with it had no injunction been granted. Indeed, the bill shows on its face that in each of the years 1917, 1918, 1919 and 1920 the taxes were not paid, and were returned delinquent (Rec., p. 39); that the

only thing appellants did was to apply to the County Courts of their several counties for judgment under the statutes. In each of those years a judgment for sale had been entered by the County Courts according to the allegations of the bill. According to the bill the property had been offered for sale in each year and not sold for want of bidders (Rec., p. 42). The property had not been, nor could it be seized, or in any way interfered with. The bill shows no act had been done, or, under the statute of Illinois, could be done, which would warrant relief in equity.

In view of the many decisions of this Court on the identical question there can be no claim that anything the appellants, as collectors of taxes for the several counties, could possibly do, under the statutes of Illinois, would amount to a taking of property without due process of law.

The only thing alleged by the bill to be threatened, or even apprehended, was that appellants would, in compliance with the laws of the state, apply to a regularly organized court of the state, in a judicial proceeding provided by law, for a judgment against the property. The statutes creating that tribunal, and providing that method of procedure, also provide for notice to the taxpayer, and all persons interested in the property have an opportunity to appear and defend. This is the anticipated act which appellees have been enjoined from doing.

This is clearly not sufficient, and it has been repeatedly so held by this Court.

In the case of **Wells Fargo & Company v. State of Nevada, 248 U. S. 165,** substantially the same facts were presented to this Court.

Under the statutes of Nevada the method of subjecting property to the payment of taxes was substantially identical with the system in force in Illinois with reference to taxes against real estate and railroad property.

In that case it was sought to enjoin the collection of the tax under the due-process clause of the Fourteenth Amendment. In disposing of that contention the Court say, reading from page 168 of the opinion:

> "A want of due process of law, in the sense of the Fourteenth Amendment, is asserted because the valuation by the State Board was made without notice to the company or according it an opportunity to be heard. Assuming that the premises is correct (as to which the record is not entirely clear), we are unable to accept the conclusion. In Nevada the mode of enforcing a tax such as this is by judicial proceeding wherein process issues and an opportunity is afforded for a full hearing. Only after there is a judgment sustaining the tax is payment enforced. This, as repeatedly has been held, satisfies the requirements of due process of law.

(Hagar v. Reclamation District, 111 U. S. 701; Winona & St. Paul Land Co. v. Minnesota, 159 U. S. 526; Gallup v. Schmidt, 183 U. S. 300.)"

The above case would seem to settle all claims of appellees in this case, based on the due-process clause, beyond all controversy.

That appellees are not entitled to equitable relief in the present case, upon any other ground, is equally clear, and well settled by other recent decisions of this Court.

In the late case of the Keokuk & Hamilton Bridge Company v. Salm, No. 130 October Term, 1921, this court passed upon a case which is identical in point of fact, and which also arose under the same statutes of Illinois. In the cited case it was claimed that the property was deliberately and fraudulently assessed at 150 per cent of its value, while the property of other persons and corporations throughout the state was assessed at only 40 per cent of its value. The District Court sustained the motion to dismiss the bill on the ground that complainant had a plain, adequate and complete remedy at law. That action of the District Court was affirmed by this Court.

In disposing of the case this Court uses the following language:

"But the bill failed to show that plaintiff was being deprived of property without due process

of law, or was being denied equal protection of the laws, or that there was any danger that it would be. (Compare Wells, F. & Co. v. Nevada, 248 U. S. 165, 168, 63 L. ed. 190, 192, 39 Sup. Ct. Rep. 62.) The law of Illinois affords ample opportunity to question the amount and the validity of an assessment, both before administrative tribunals and in its courts.

"The provisions relating to the assessment and taxation of real estate apply to the assessment and taxation of bridge structures like that of the appellant (Hurd's Rev. Stat. [Ill.] 1919, Chap. 120, Par. 354). Every such assessment made by the County Assessors is subject to revision by them (Sections 319, 320).

"Moreover, upon complaint in writing that an assessment is incorrect, a board of review is required to give a hearing, and to correct the assessment 'as shall appear to be just' (Section 329; Standard Oil Co. v. Magee, 191 Ill. 84, 60 N. E. 802)."

Although the assessment in the cited case was made by the local assessor, and this Court in its opinion only pointed out the methods provided for the review of assessments, so made by applying to certain administrative tribunals, the laws of Illinois also clothe the taxpayer, whose property is assessed by the Tax Commission, with the same safeguard as those whose property is assessed by the local assessors.

But this is not material—it is unimportant how, or by whom, the assessment is made. The fact remains that before the property can be seized or subjected to payment of the tax assessed against it the Collector must resort to a judicial tribunal, where a full hearing is afforded, and obtain a judgment confirming the tax and an order of sale.

Paragraph 114 of Chapter 120, supra, also provides for publication of the assessment as made by the State Tax Commission for the purpose of giving property owners notice of the amount of the assessment. That section is as follows:

> "Upon the completion of the original assessments to be made by the Tax Commission it shall publish a full and complete list of such assessments in the state 'official newspaper.' Any person or corporation feeling aggrieved by any such assessment may, within ten days of the date of publication of such 'official newspaper' containing such list, apply to the Tax Commission for a review and correction of the assessment complained of. Upon such review the Tax Commission may make such correction, if any, therein as may be just and right."

Paragraph 115 of the same chapter then provides

for an appeal from the Tax Commission to the Circuit Court of the proper county, in the following language:

> "Par. 115. Any person feeling himself aggrieved by an assessment made by the Tax Commission may appeal to the Circuit Court of the county in which such property or some part thereof is situated, for the purpose of having the lawfulness of such assessment inquired into and determined.
>
> "The person taking such appeal shall file with the Tax Commission written notice of such appeal, which notice shall state in full the grounds of such appeal. Such notice of appeal shall be filed within ten days after such assessment is made and notice given thereof. Thereupon the Tax Commission shall prepare and transmit to the clerk of the court to which such appeal is taken a copy of such notice of appeal and a copy of all evidence, documents, papers, books and files pertaining to such appeal, which copies shall be certified to as correct by the Director of Finance. The appeal shall be heard without formal pleadings upon the record so certified by the Tax Commission. Appeals shall lie from the judgment of the Circuit Court to the Supreme Court. The remedy by appeal herein provided for shall not be construed to be exclusive."

Under the above statutes appellees had notice of the assessment by the official publication provided for in paragraph 114. Then they had the right, under the same statute, to apply to the Tax Commission to re-

view and reduce the assessment, and, failing in this, they still had the right to appeal to the Circuit Court of any county in which any of the property was located. It does not appear that they pursued either of those remedies. Failing in, or failing to pursue these remedies, the taxpayer and all persons interested in the property still were protected from an illegal sale or seizure of the property by the statute requiring the Collector to give notice before applying to the County Court for judgment, giving all persons an opportunity to be heard, in a proceeding in which all errors, or alleged errors, beginning with the original assessment, and down to the entry of judgment for sale, could be litigated and judicially determined. Any person interested in the property still had the right to appeal from that judgment to the Supreme Court of the state.

As this Court said in the case of **Keokuk & Hamilton Bridge Company v. Salm, supra:**

> "There is thus no basis for the contention that resort to a suit, such as this, was necessary to prevent either a sale for an illegal tax creating a cloud upon the title, or multiplicity of suits to recover back the tax, or other irreparable injury."

Under the **Wells Fargo Company case, supra**, and the **Keokuk & Hamilton Bridge Company case, supra,**

clearly no grounds for relief were alleged in the bill in this case, and the District Court erred in not sustaining the motion to dismiss the suit.

The case of **Raymond v. Chicago Union Traction Company, 207 U. S. 20,** was also relied upon in the court below by counsel for appellees as sustaining their position. But an examination of the **Raymond** case will show that it sustains our contention, and not the propositions of appellees.

In the first place the taxes involved in the **Raymond** case were personal taxes and not real property taxes. They were not in any sense railroad taxes levied upon railroad right of way or rolling stock. The tax was a personal tax extended against the owner of the property, and not against the property itself. The assessment on which it was based was on the value of the capital stock of the corporation, which was intangible personal property. The method of enforcing the payment of personal taxes is under **Paragraphs 150 and 155** of the above chapter of the Revenue Act. These sections read as follows:

> Par. 150. "To each collector's book a warrant, under the hand and official seal of the county clerk, shall be annexed, commanding the collector to collect from the several persons named in said book the several sums entered in the column of totals opposite their respective names. The warrant shall direct the collector to pay over

the several kinds of taxes that may be collected by him to the respective officers entitled thereto, less the compensation for collection allowed him by law."

Par. 155. "In all cases the warrant shall authorize the town or district collector, in case any person named in such collector's book shall neglect or refuse to pay his personal property tax, to levy the same by distress and sale of the goods and chattels of such person; and it shall require all payments therein specified to be made by such town or district collector on or before the tenth day of March next ensuing."

It will be noted that **Paragraph 155, supra,** makes it the duty of the Collector to levy the warrant issued under **Paragraph 150, supra,** on **ANY** goods or chattels belonging to the person or corporation against whom the tax is assessed. This warrant is levied the same as an execution against personal property, and the property is sold under the warrant by the Collector, and no opportunity is given to the taxpayer or any person interested in any of the property levied on to make any defense whatever.

In other words, the personal taxes are assessed against the owner of the property, and when extended become the personal civil debts of such owner and are a lien against all his personal property under paragraph 269, chapter 120, supra, from the date the Collector's book is delivered to the Collector. If the

tax is not paid within the time fixed by law the Collector is required to immediately levy the warrant issued to him under paragraph 150, supra, on any personal property of the delinquent taxpayer, and sell the same. No resort to the courts is required of the Collector, as in case of real estate and railroad property tax. All the taxpayer can do to prevent a sale of personal property under the tax warrant is to either pay the tax or resort to a court of equity to enjoin the sale of his property under the tax warrant. Truly, he has no remedy at law, and none other save in a court of equity.

In the **Raymond** case the facts are stated on page 26 of the opinion by Mr. Justice Peckham as follows:

> "The total tax of the appellee on the second assessment amounted to about the sum of $1,000,000.00 more than the tax paid under the first assessment. It is the duty of the collector and the county treasurer to enforce the collection of these taxes, together with a penalty by reason of the delay in payment, and to that end levy the amount by distress and sale of the goods and chattels of the appellee, **and which cannot be prevented or defended by the appellee otherwise than by payment or by a bill in chancery.** The appellee's personal property consists chiefly of its cars and other personal property actually used in its business of transporting passengers, and the levy of said tax will greatly embarrass

it in its business, and also injure the public using its cars. After collecting the taxes it is the duty of the collector, and he is required by law, to pay over and distribute them in the proportions designated in the tax book to the City Treasurer of Cook County, the treasurer of the sanitary district, and other officers and authorities entitled to receive the same. In order to recover back the amount thus paid to the collector appellee will be obliged to bring separate suits against each one of the bodies receiving its proportionate share of said tax, necessitating a multiplicity of suits. Repayment of the amount which should be paid for the uses and purposes of the State of Illinois could not be enforced by any legal proceeding whatever, nor could payment be obtained from anyone which would cover the costs, including the commissions deducted for the recovery of the taxes; and if proceedings to collect the taxes were not enjoined great and irreparable injury would result to the appellee, for which there was no complete or adequate remedy at law. It was then alleged that to pay the enormous sum of over a million dollars, claimed as the tax for 1900, would render it impossible for the company to pay its rentals or preserve its leasehold interests, and would necessarily result in its insolvency.'

It clearly appears, therefore, that in the **Raymond** case only personal property tax was involved, and that it was clearly the duty of the tax collector to enforce payment of the tax by levying the collector's

warrant on the property and thereby subject it to the payment of the taxes extended. It further appears from the statement that the mere levying of the distress warrant would cause irreparable damages to the taxpayer, and, as the Court well said, to compel the taxpayer to pay the taxes and then bring suits to recover it back would involve a multiplicity of suits against the various taxing districts, resulting in enormous costs, and that that portion of the tax going to the state could not be recovered back in any proceeding, and further, that the payment of the amount, viz., over one million dollars, would render the taxpayer insolvent and compel it to cease doing business. A more disastrous situation could not be imagined than the one presented by the averments in the bill in the **Raymond** case, and as the Court well said, the taxpayer had no remedy to prevent the levy of the tax warrant and the sale of its property, except, either, by the payment of the tax itself, or by resorting to a court of equity.

It is apparent, also, that the opinion in the **Raymond** case did not overlook the principle that equity had no jurisdiction, if there were any remedies open to the taxpayer in a court at law. In speaking with reference to this proposition the Court, reading from page 39 of the opinion, say:

> "Finally it is objected that the appellee had a complete and adequate remedy at law by paying

the amount of the warrant and then suing the collector to recover the same back as money paid under duress, although upon a void warrant. Undoubtedly, if there be a complete and adequate remedy at law in such a case as this, the remedy in equity will not be recognized. Assuming the tax void, equity will not restrain, by injunction, its collection, unless there be some other ground for equitable interposition. * * *

"In the cases in 139 U. S., supra (Shelton v. Platt, 139 U. S. 591; Allen v. Pullman Palace Car Co., 193 U. S. 658), it was recognized that no ground appeared for the interposition of a court of equity, because of the existence of a statute in the State of Tennessee providing for paying the amount of the alleged illegal tax to the officer holding the warrant, and granting to the taxpayer a right to commence an action to recover back the tax thus paid, the statute providing that the officer should pay the amount received into the state treasury, where it was to remain until the question was decided, and, if it was decided in favor of the taxpayer, provision was made for the repayment of the amount by the state. The other averments, beside that of the illegality of the tax, made in the two cases, were paid not to constitute a ground for the interposition of a court of equity by restraining the collection of the tax. In the case of Pacific Express Co. v. Seibert, 142 U. S. 339, the Court held that there was no ground to warrant the interposition of a court of equity. The case was decided upon the ground that the averment of illegality of the tax was not sustained. There is no statute

of a similar kind in Illinois which has been called to our attention, but some of the cases in that state hold that such a suit may be maintained against the collector when the money was paid under protest.

"In the case at bar it is averred that it is the duty of the collector, having received the money on his warrant, to pay the sums so received in the proportions designated in his tax books to the city treasurer of the City of Chicago, the county treasurer of the County of Cook, the treasurer of the sanitary district and other officers and authorities entitled to receive the same, and if the plaintiff instituted to recover back the taxes so paid to the town or county collector he would be obliged to bring separate suits against each of the several taxing bodies receiving its proportionate share of the tax, thereby necessitating a multiplicity of suits, and the proportion of the tax which would go to the State of Illinois could not be collected back by any legal proceeding whatsoever; and if repayment could be compelled from the City of Chicago and other taxing bodies, such repayment would not cover the cost, including commissions deducted for the collection of the tax, and in that way it was averred that the appellee would be subjected to great and irreparable injury, for which there was not a competent or adequate remedy at law. There was also the allegation, already referred to in the foregoing statement, that, if compelled to pay this enormous tax, it would be rendered insolvent. We think these allegations combined take the case out of the class where relief is

> prayed for, founded simply upon the unconstitutionality of the law under which the tax is levied, or upon the illegality, for any other reason, of the tax itself, and bring the case within the jurisdiction of a court of equity. And in addition, there is the allegation that a levy upon the property of the appellee would interfere with the operation of the street car system in the city of Chicago, operated by the appellee, and would greatly embarrass and injure the public who have to use the cars.
>
> "Upon the whole we think it is apparent that no adequate remedy at law exists in this case."

It will be seen from the foregoing that the Court, in the opinion, did not overlook this important question, but gave it due consideration and upon all the facts averred found there was in fact no adequate remedy at law. This finding was based solely upon the fact that there was no legal proceedings required by statute intervening between the issuance of the tax collector's warrant and the levy of that warrant upon the property of the taxpayer and the sale of such property, thereby subjecting his property to the payment of the tax, whether legal or illegal. There was no legal method provided by which the levy of the warrant could be stayed, and the validity of the tax litigated, before the property of the taxpayer was interfered with, save in a court of equity. No such situation exists in the case at bar. If no bill

had been filed to enjoin the collection of the taxes in the case at bar, there is nothing the collectors could do, except return the taxes delinquent, give three weeks notice by publication of the delinquent list in a newspaper, together with a notice stating the time and place at which they would apply to the County Courts of the several counties for judgment for sale of the property for the payment of the taxes in question, at which time and place the taxpayer could appear and have a full and complete hearing upon every question presented as to the validity of the tax, including the question of the alleged fraudulent discriminatory overvaluation.

In the case of **Wells Fargo & Co. v. Nevada, 248 U. S. 165**, this identical proposition was also presented to the Supreme Court. In that case the Court say:

> "A want of due process of law in the sense of the Fourteenth Amendment is asserted because the valuation by the State Board was made without notice to the company, or according it an opportunity to be heard. Assuming that the premise is correct (as to which the record is not entirely clear), we are unable to accept the conclusion. In Nevada the mode of enforcing a tax such as this is by a judicial proceeding wherein process issues and an opportunity is afforded for a full hearing. Only after there is a judgment

> sustaining the tax is payment enforced. This, as repeatedly has been held, satisfies the requirements of due process of law."

The same language can be applied to the case at bar. The mode of enforcing the tax involved in this suit is by applying to the County Courts of the several counties for judgment sustaining the tax and ordering sale of the property. Process by way of publication is provided, and only after there is a full hearing and a judgment sustaining the tax can the payment be enforced by a sale of the property, and as the Court say in the above case:

> "This, as has been repeatedly held, satisfies the requirements of due process of law."

It seems to us that nothing could be clearer than the distinction between the **Keokuk & Hamilton Bridge case** and the **Greene** and **Raymond** cases. This case is identical with the **Keokuk & Hamilton Bridge** case and is absolutely dissimilar to the **Greene** and **Raymond** cases.

It is laid down in all the cases in equity and in unmistakable language, that in order to enjoin the collection of a tax in the federal courts, two things must exist and concur in every case:

First. There must be federal jurisdiction or a federal question. This requirement is met in all of the

cases, as well as in the case at bar, with the averment that the taxpayer is about to be deprived of his property without due process of law. It is not sufficient, however, that this one condition is found to exist, but it must also concur with the further condition and essential requirement that some ground must be stated for equitable relief. In the **Raymond** case, the ground stated was that there was no remedy at law; that it was the duty of the collector to levy his warrant upon the property at once, and that unless enjoined he would do so; that if the taxes were paid, suits to recover back the money would be multitudinous as well as unavailing. It was further averred that the payment of the million dollars taxes in that case would render the taxpayer insolvent, would destroy its business and deprive it of its property without any opportunity to be heard in any judicial tribunal. In the **Greene** case a like condition existed, with like penalties and with like irreparable results.

But no such condition was shown to exist either in the **Keokuk & Hamilton Bridge** case or in the case at bar.

Without any regard to whether the taxpayer would have the right to appeal from the finding of the administrative board making the assessment or to have a judicial hearing on that question, this Court holds conclusively that where there is nothing the collector can do to enforce payment of the tax until he goes

to the County Court and obtains a judgment, and where the statute, as our statute provides, that on the application for such judgment the taxpayer shall be notified and have a full opportunity to be heard upon every question affecting the validity of the tax, that there is no equitable jurisdiction because the bill fails to show that the taxpayer is about to be deprived of his property without due process of law.

In this case, as well as in the **Keokuk & Hamilton Bridge** case, the only way the collector or any other officer of the State of Illinois, or any subdivision thereof could deprive the taxpayer of its property and subject that property to the payment of the taxes involved, would be to first procure a judgment for sale in the County Court. That being true, this affords the due process of law guaranteed by the Fourteenth Amendment, as clearly stated by this Court in the **Wells Fargo & Company case, supra.**

It matters not that the state courts of Illinois will grant equitable relief in certain cases where there is also a remedy at law. This rule does not prevail in the federal courts.

In the courts of the United States it is a guiding rule that a bill in equity does not lie in any case where a plain, adequate and complete remedy may be had at law.

Singer Sewing Machine Co. v. Benedict, 229 U. S. 481.

Moreover, the federal statutes expressly so provide:

> "Suits in equity shall not be sustained in any courts of the United States in any case where a plain, adequate and complete remedy at law may be had."

Sec. 267, Judicial Code.

The provisions of Section 267 of the Judicial Code are obligatory at all times and under all circumstances and are applicable to every form of action, the laws and decisions of the several states notwithstanding.

Wehrman v. Conklin, 155 U. S., 314, 323.

Equity jurisdiction of the federal courts does not depend on the manner or extent of such jurisdiction exercised by the state courts, but only what was a proper subject or equitable relief in courts of equity in England.

Robinson v. Campbell, 3 Wheat. 212;
U. S. v. Howland, 4 Wheat. 108.

A rule established in the state courts respecting equity jurisdiction cannot be admitted to change the

doctrines of equity as recognized and applied in the federal courts.

Bennett v. Butterworth, 11 How. 669;
Scott v. Neely, 140 U. S. 106.

A notable application of the rule of the courts of the United States has been in cases where a demand has been made to enjoin the collection of taxes, or other impositions, made by state authority, upon the ground that they are illegal or unconstitutional. The decisions of the state courts in cases of this kind are in conflict, and we need not examine them. It is a mere matter of choice of convenient remedies for a state to permit its courts to enjoin the collection of a state tax because it is illegal or unconstitutional. Very different considerations arise where courts of a different, though paramount, sovereignty interpose in the same manner and for the same reasons. An examination of the decisions of this court shows that a proper reluctance to interfere by prevention with the fiscal operation of the state governments has caused it to refrain from so doing in all cases where the federal rights of the persons could otherwise be preserved unimpaired. It has been held uniformly that the illegality or unconstitutionality of state or municipal tax, or impositions, is not of itself, a ground for equitable relief

in the courts of the United States. In such case the aggrieved parties are left to their remedy at law when the remedy is as complete, practical and efficient as the remedy in equity.

Boise Artesian etc. Co. v. Boise City, 213 U. S. 276;
Singer Sewing Machine Co. v. Benedict, 229 U. S. 481.

Where the remedy at law is adequate in theory it deprives equity of jurisdiction, although it may be inadequate in its practical result. By inadequacy of remedy at law is meant, not that it fails to produce results, but that it is not fitted, or adapted, to the end in view.

Rees v. Watertown, 19 Wall. 107.

A remedy in equity is the alternative to the want of a remedy at law; hence, it is not enough to show that the plaintiff **may** not have, but it must appear that he **does** not have, a plain, adequate and complete remedy at law.

Van Wyck v. Knevals, 106 U. S. 360.

It will no doubt be contended on the other side that there was equity jurisdiction because the bill alleged that the assessments were "fraudulently" made, in

excess of the actual value of the property, but this Court has already considered that question. In the case of the **Singer Sewing Machine Company** v. **Benedict, 229 U. S. 481,** this Court say:

> "It is also said that there were special circumstances calling for equitable relief in that the act of the assessor in making the additional assessment without giving any notice of it was necessarily a fraud, an accident, or a mistake. No such claim was made in the bill, and even had it been, it would be unavailing, unless founded upon something more than the charge that no notice was given, and that the company had no property within the city and county, other than that returned by it. We say this, because the fraud, accident, or mistake which will justify equitable relief must be something more than what is fairly covered by the charge here made, for otherwise the well-settled rule that mere illegality of the tax affords no grounds for such relief would be a myth. There really could be no case in which the illegality could not be said, with equal propriety, to be the result of fraud, accident or mistake, for it always arises out of some deviation from law or duty."
>
> Singer Sewing Machine Co. v. Benedict, 229 U. S. 481, 487.

The objection to the jurisdiction of the federal court of equity, on the ground of an adequate remedy

at law, may be raised at any time, even on the hearing on appeal.

> Southern Pacific Co. v. United States, 200 U. S. 241.

In the federal courts relief will be denied in cases in equity where the remedy at law is plain, adequate and completed, even though the question was not raised by the defendants in their pleading, or suggested by the counsel in argument, because it is a question of jurisdiction and no admission of the parties can change the law, or give jurisdiction to a court in a case of which it has no jurisdiction.

> Allen v. Pullman's Palace Car Co., 139 U. S. 658;
> Indiana Mfg. Co. v. Koethe, 188 U. S. 681;
> Raymond v. Chi. Union Trac. Co., 107 U. S. 20;
> Javierre v. Central Altagracia, 217 U. S. 502.

Equity does not take jurisdiction of cases of fraud where the relief properly obtainable on that ground can be obtained in a court of law.

> Equitable Life Assurance Society v. Brown, 213 U. S. 25, 50;
> United States v. Bitter Root Development Co., 200 U. S. 451.

By the averments in paragraph 8 of the bill of complaint in this case there is a futile attempt to bring the case within the opinion in the **Greene** and **Raymond** cases. We have already pointed out that this cannot possibly be done. In those cases the taxpayer had no other alternative except to pay the tax and bring a multiplicity of suits against numerous persons to recover back the taxes, which this Court pointed out would be unavailing for the reason that the portion of the tax going to the state, as well as the cost of collection, could not be recovered back in any form of action. The remedy at law, therefore, was wholly inadequate.

In the present case, however, the taxpayer is not forced to this alternative. In the case of railroad property taxes, which are here involved, he cannot be forced to pay until he is brought into the state court by proper process and given an ample opportunity to interpose every defense to the tax which is alleged in the bill of complaint in this case.

The statutes of Illinois give the owner of real estate or railroad property an opportunity to present every defense in a court of law before his property can be seized or subjected to the payment of the taxes under the lawful process of that court. Hence the allegations in paragraph 8 of the bill are pure surplusage and every averment of said paragraph 8 is disputed by other allegations in the bill itself, as well as by the

statutes of the State of Illinois and the decisions of this Court and the Supreme Court of the State of Illinois, above cited.

The allegations in that paragraph, that defendants would seize the property and that complainants would be compelled to pay the tax and bring suits to recover back the money, fall of their own weight when compared with other allegations of the bill and the plain provisions of the statutes of the State of Illinois.

Counsel on the other side will not contend nor make any claim that the things alleged in paragraph 8 could be done under the statutes of Illinois, nor will he contend that by any process permitted by the statutes of Illinois could the property in question be seized, except through a regular judicial proceeding, in which all defenses to the taxes could be made.

If the taxes in controversy were personal taxes then paragraph 8 of the bill would be entitled to respectful consideration, but the issues being confined solely to railroad property tax, paragraph 8 of the bill is as foreign to the issue and to the relief prayed for as the East is foreign to the West.

It is perfectly apparent that when **paragraph 8** of the bill was dictated the counsel who prepared the bill had before him the opinion in the Greene case; but this case must be determined by the laws of Illinois and not by the laws of Kentucky. The inclusion of the allegations of paragraph 8 in the bill only

shows that counsel fully recognized the rule which we have asserted, that relief in equity is only available where there is no adequate remedy at law.

Counsel for appellees made some contention in the court below that there was equitable jurisdiction because he claimed the suit was one for an accounting. We think he is too good a lawyer to make any such contention in this Court.

It is true appellees, in the prayer for relief, asked:

> "That upon a hearing hereof the court shall take full account and make findings of the value of the property aforesaid in each of the years 1917 to 1920, inclusive, for the purpose of taxation and determine the taxes equitably due to the said several taxing districts upon a legal assessment of said property, and upon determination thereof order and decree the full satisfaction of any tax remaining unpaid, and upon the payment thereof, perpetually enjoin and restrain the said defendants and their successors in office from collecting said unlawful taxes, interest, penalties and costs found to be in excess of that legally due to each of said defendants upon such an accounting" (Rec., p. 47).

Where it is sought to sustain the jurisdiction of a federal court of equity on the ground that the suit is one for an accounting, great complexity ought to exist in the accounts, or some difficulty at law should

interpose in order to induce a court of equity to exercise jurisdiction.

Fowle v. Lawrason's Exrs., 5 Pet. 495, 503.

Suits for accounting in equity are rarely sustainable on that ground alone. The right to an accounting, like discovery, is usually incidental to some other relief, and the equity jurisdiction is sustainable on some other recognized ground of equity jurisdiction.

It may be stated as an elementary proposition, as old as our system of jurisprudence, that if there is no discovery sought, and no fiduciary relation exists between the parties, equity has no jurisdiction for an action for accounting unless the accounts are mutual or complicated.

De Bevoise v. H. & T. Co., 67 N. J. Eq. 472;
1 Corpus Juris, p. 618.

Jurisdiction in equity of suits for accounting depend upon the inadequacy of the common-law remedy. Unless the bill discloses enough complexity to render the accounting in a court of law unduly burdensome and embarrassing a court of equity should refuse to take jurisdiction.

Alexander v. Mason, 125 Fed. 830.

In this case there is neither mutuality nor complexity of accounts. The accounting sought by the bill is purely incidental to other grounds relied upon for relief. No one will contend with any degree of sincerity that a suit to enjoin the collection of taxes, on the ground that such taxes are void, is a suit for accounting or that federal equity jurisdiction is sustainable on that ground.

Neither was there any ground of equitable jurisdiction because of a threatened multiplicity of suits.

In relation to the question of equitable jurisdiction on the ground of prevention of a multiplicity of suits, this Court, in Hale v. Allinson, 188 U. S. 56, on page 77 of the opinion, uses the following language:

> "Cases in sufficient number have been cited to show how divergent are the decisions on the question of jurisdiction. It is easy to say it rests upon the prevention of a multiplicity of suits, but to say whether a particular case comes within the principle is sometimes a much more difficult task. Each case, if not brought directly within the principle of some preceding case, must, as we think, be decided upon its own merits and upon a survey of the real and substantial convenience of all parties, the adequacy of the legal remedy, the situations of the different parties, the points to be contested and the result which would follow if jurisdiction should be assumed

or denied; these various matters being factors to be taken into consideration upon the question of equitable jurisdiction on this ground, and whether within reasonable and fair grounds the suit is calculated to be in truth one which will practically prevent a multiplicity of litigation and will be an actual convenience to all parties, and will not unreasonably overlook or obstruct the material interests of any. The single fact that a multiplicity of suits may be prevented by this assumption of jurisdiction is not enough in all cases to sustain it. It might be that the exercise of equitable jurisdiction on this ground, while preventing a formal multiplicity of suits, would nevertheless be attended with more and deeper inconvenience to the defendants than would be compensated for by the convenience of a single plaintiff; and where the case is not covered by any controlling precedent the inconvenience might constitute good ground for denying jurisdiction."

Again, in Boise Artesian Water Co. v. Boise City, 213 U. S. 276, this Court announces the rule that a court of equity ought not to interfere on the ground of danger of a multiplicity of suits by the same persons against the complainants for causes of action arising out of the same facts and legal principles unless it is clearly necessary to protect the complain-

ant against continuing and vexatious litigation and, on page 287 of the opinion, the Court say:

> "Here is a case where every possible defense to the collection of the license fee which has been suggested by the company is available to it in the action at law pending in courts of the State of Idaho, and there is no reason whatever shown why the law should not take its course. Presumably the company, on the ground of diversity of citizenship, might have removed the case from the state court to the Circuit Court of the United States, if the attempt had been seasonably made. If, however, the litigation continues up to the court of final resort of the State of Idaho, and all claims under the Constitution of the United States are seasonably and properly made in the state courts, and are denied, then the company would be entitled to a review by this court of the judgment of the state court."

The same rule is announced and discussed in United States v. Bitter Root Development Co., 200 U. S. 451, in the following language:

> "Nor do we see that there is any jurisdiction on the ground of prevention of a multiplicity of suits. Those persons who were guilty of the wrong must be made parties in either court, in order to bind them. Such alleged multiplicity is not avoided in one court more than in the other.

> It is not a case where a few defendants may be made parties as representatives of a class holding under or claiming the same title or right, and so that a judgment against the representative defendants may bind all others of the class. There is no class and there can be no representatives."

Clearly there is no jurisdiction in equity on any ground stated in the bill or upon any other ground that could be stated under the facts and under the statutes of the State of Illinois.

The final decree in this case, to our minds, presents a legal paradox without precedent in the annals of the jurisprudence of this country. We venture a guess that this is the first case on record where a litigant has sought or obtained a decree enjoining his adversary from instituting proceedings in a regularly organized and constituted court of law, on the ground that the judgment of that Court would amount to a denial of due process of law.

The term "due process of law" is defined to mean a course of legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights.

The decree enjoins the appellants from resorting to the "due process of law" provided by the laws of the State of Illinois, for the protection of the private rights of the owners of railroad property which is assessed for taxation. The decree presupposes that the judgment of the courts provided by the Constitution and laws of Illinois, in which the questions raised by the bill may be litigated, for the protection of the property owner, will amount to a denial of due process of law. In other words, the position of appellees, is, that the proceedings in the courts of the State of Illinois, which are legal proceedings according to the rules and principles which have been established in our system of jurisprudence for the protection and enforcement of private rights, will in itself constitute a denial of due process of law, hence, we say that the decree has no precedent and violates every principle found in our system of jurisprudence.

We respectfully submit that the decree of the District Court cannot be sustained on any principle of law or equity; that under the facts alleged in the bill and under the laws of Illinois, the appellees had a plain, adequate and complete remedy at law, and that the decree should be reversed and the cause re-

manded with directions to sustain the motion to dismiss the suit.

Respectfully submitted,

JUNE C. SMITH,
Attorney for Appellants.

FRANK F. NOLEMAN,
ANDREW J. DALLSTREAM,
C. F. DEW,
State's Attorney, Marion County.

H. V. MURRAY,
State's Attorney, Clinton County.

H. H. HOUSE,
State's Attorney, Washington County.

J. E. HARRISS,
State's Attorney, Perry County.

L. F. HACHMAN,
State's Attorney, Randolph County.

Of Counsel.